ORIGINAL

EXHIBIT CAP-01

DIRECT TESTIMONY OF J. MICHAEL RAYMOND

J. Michael Raymond hereby states under penalty of perjury as follows:

My name is J. Michael ("Mike") Raymond; I am Vice President - Chief Operating Officer of Capitol Radiotelephone Company, Inc. d/b/a Capitol Paging ("Capitol"), whose principal office is located at 1420 Kanawha Boulevard East, Charleston, West Virginia 25301. As part of my duties I am responsible for, and supervise and manage, all of the services Capitol provides to the public. I have had substantially all of my current duties for Capitol since joining the company in February 1989.

Capitol provides common carrier paging and mobile radio service to the public under various FCC Part 22 radio station licenses that have been made subject to the show cause proceedings in this case. These licenses authorize the provision of mobile radio service predominately in the area around Charleston, as well as radio paging service throughout much of the state of West Virginia and into a portion of the southeastern corner of Ohio. These services are licensed and regulated by the FCC; and are also certificated and regulated by the West Virginia Public Service Commission.

Capitol has been a radio common carrier for 30 years. In fact, it was the first radio common carrier certificated

Federal Communications Commission

Docket No. 93-231 Exhibit No. Cap 1

Presented by Capital

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Reporter A. Wilson

Date FEB 02 1994

in West Virginia after the state asserted regulatory jurisdiction over radio common carriers. By far the biggest component of Capitol's business is its radio paging business, with approximately 2,900 paging customers.

Capitol has also provided telephone answering service in Charleston since the early 1950s. This service is not licensed or regulated by either the FCC or the Public Service Commission.

Capitol also is formerly the licensee of Private Carrier Paging ("PCP") Station WNSX646, the operation of which is at issue in this proceeding.

Background of Capitol's PCP Application

I am the person who initially conceived of the idea of Capitol getting into the PCP business, and who supervised and managed the implementation of this idea. Capitol did not get into the PCP business to cause interference to anybody else, and I deeply resent the allegation in the hearing order in this case that Capitol did so. Quite the opposite, Capitol was simply trying to supplement its common carrier paging services with a lower-priced private carrier service, so that it would be in a better position to offer an existing or prospective customer whatever level of service it needed. In that way Capitol hopefully would be able to remain competitive and successful in the marketplace, regardless of whether its competition was additional common carriers, private carriers or whatever.

At the time, I thought that this was exactly the type of competitive response that the FCC has been encouraging in the paging services. Indeed, I even thought -- rather foolishly as it turns out -- that Capitol would be applauded for doing exactly what the FCC wanted it to do. Instead, unfortunately, Capitol has been the victim of what I can only describe as a vicious campaign orchestrated by RAM Technologies, Inc. d/b/a RAM Page ("RAM") to prevent Capitol from being licensed on 152.48 MHz and, when that failed, to simply run Capitol off of the channel.

RAM's purpose in doing so is obvious; keeping Capitol off of the channel used by RAM for its own PCP services preserves the status of that channel (in the Charleston and Huntington, West Virginia, areas at least) for all practical purposes as a "protected" paging channel similar to a common carrier paging channel. In other words, by running Capitol off of 152.48 MHz, RAM could continue to convert what is supposed to be a shared paging channel under FCC rules into what amounts to an exclusive paging channel like a Part 22 channel.

There are several reasons why Capitol elected to establish a separate PCP service on 152.48 MHz as a supplement to its existing common carrier services. Because West Virginia regulates Capitol's common carrier paging service, the easiest way to establish a more economical paging service was to set up a separate private carrier paging system.

Capitol could charge whatever it wanted to for its PCP service, and the Public Service Commission could not regulate it.

However, if Capitol tried to set up an economy-type service on its common carrier system, the Public Service Commission might raise an issue of unlawful discrimination and/or attempt to have Capitol lower its paging rates across the board. Since Capitol's common carrier paging service was $15.00 per month, taking that kind of risk did not appear justified in light of the fact that a relatively straight-forward alternative, a private carrier paging system, was readily available.

Similarly, attempting to create a different level of service within Capitol's common carrier system, such as by having a rate for only a limited geographic coverage on the wide area system, would have involved more technical complexity and corresponding expense than I felt was justified under the circumstances.

The only other possible alternative I could think of was to create a new and smaller common carrier system instead of a private carrier system. However, I did not seriously consider it at the time because there was almost no chance that a suitable frequency would be available for Charleston and Huntington under Part 22 of FCC rules, and the licensing process for a Part 22 frequency usually takes a lot longer and is more expensive than in the private

services. Therefore, every indication at the time pointed in the direction of establishing a separate private carrier paging system to supplement Capitol's existing common carrier services.

At the time I decided to get Capitol into the PCP business, which was the latter part of 1989, I also felt that the frequency 152.48 MHz was the only practical alternative. I did not believe that the available UHF frequencies were technically suitable due to the rugged terrain in the Charleston and Huntington areas.

In addition, Capitol had an inventory of VHF voice pagers from its common carrier service that could be recrystalled and used for the PCP service. Also, 152.48 MHz was the only VHF frequency on which high-powered paging transmitters were allowed, and a lot of other carriers had systems on that channel that could be networked together. Therefore, I felt that 152.48 MHz was the only frequency that made any sense for Capitol to establish its PCP service on.

In establishing the PCP service, I also believed that Capitol should avoid making a major investment in the PCP system, at least until we had some better indication how successful the service was going to be. As I said before, the purpose of establishing the PCP service was to supplement Capitol's primary common carrier service, not to replace it. Therefore, I did not expect to generate a big PCP

customer base, because we would continue to try to get customers to take the common carrier service if possible.

I felt that those customers that couldn't afford, or did not want to pay the higher price for, the common carrier service would be the most likely candidates for PCP. My philosophy was that getting or keeping those customers as PCP subscribers was better than losing their business altogether, but getting them to take the common carrier service was still the preferred alternative for those customers that were willing and able to pay for it. As a result, until we had a better idea what kind of investment the PCP service could support, I wanted to establish the system as economically as possible.

RAM's Attempts to Keep Capitol Off 152.48 MHz

Capitol sent its application for 152.48 MHz to the National Association of Business and Educational Radio ("NABER") for coordination in December 1989. After the initial submission, I had several phone conversations with the NABER coordinator because she said that RAM was claiming that 152.48 MHz was already too busy to let Capitol get on it. Therefore, at NABER's request I had additional monitoring of the channel performed, which confirmed my earlier observation that there was enough channel time available for the type of supplemental service Capitol had in mind.

After I supplied the additional information NABER requested, NABER coordinated the frequency and forwarded

Capitol's application to the FCC with a favorable recommendation. Capitol's files indicate that this initial coordination occurred on March 22, 1990.

Exactly one week later, RAM started a steady stream of protests at the FCC attempting to block Capitol's application from being granted. Exhibit CAP-02 is a copy of RAM's Petition to Deny, Or, Request to Amend Application dated March 29, 1990, which RAM claimed to be filing under Section 309(d) of the Communications Act; Exhibit CAP-03 is a copy of RAM's companion Motion for Stay of Application dated March 29, 1990 and its Reply to Opposition dated April 9, 1990; Exhibit CAP-04 is a copy of RAM's Supplement to Petition to Deny, Or, Request to Amend Application dated April 13, 1990; and Exhibit CAP-05 is a copy of RAM's Supplement to Petition to Deny, Or, Request to Amend Application dated July 26, 1990.

This type of protest used to be commonplace in Part 22 application proceedings, although I would say that the tone and substance of RAM's pleadings were quite extreme even by traditional Radio Common Carrier (RCC) industry standards. I was initially surprised by RAM's litigation, because I had been advised by Capitol's FCC attorneys at that time that RCC-type protests were not permitted in the private radio services. However, then I was reminded that Bob Moyer, RAM's owner, is an old line RCC that got back into the

paging business as a PCP when his covenant to compete expired after selling his RCC business several years ago.

RAM had first tried to convince NABER that RAM used 152.48 MHz too heavily in the Huntington/Charleston area to permit any additional carriers on the channel, and that NABER should decline to recommend 152.48 MHz as Capitol requested. When that tactic failed, RAM stepped up its attack in its protest to the FCC and claimed that Capitol intended to use its PCP station to interfere with RAM's operations rather than as a legitimate business in its own right.

I knew that this new argument was untrue and ludicrous; and the "proof" that RAM submitted with its FCC protest was so flimsy and transparent that it could not possibly support RAM's wild claims. This is because the material statements in the affidavits submitted by RAM were either obviously self-serving or distortions of legitimate sales attempts by Capitol personnel, and that is exactly what we told the FCC at the time.

Although I was quite disturbed by RAM's litigiousness and the strident tone of its attack, I also understood that RAM was simply playing the old RCC game of using litigation in the licensing process to try to keep competitors out of the marketplace. I also thought that the FCC would be able to see right through RAM's ploy, so I felt that the best way

to handle the situation was to maintain a low profile and let the FCC draw its own conclusions.

The FCC did see through RAM's ploy and rejected its protests. Exhibit CAP-06 is a copy of the FCC's letter August 9, 1990 rejecting RAM's protest. That did not stop RAM, however. Exhibit CAP-07 is a copy of RAM's Petition for Reconsideration dated August 28, 1990 to overturn the FCC's rejection of RAM's protest; Exhibit CAP-08 is a copy of RAM's companion Motion for Stay of Application dated August 28, 1990; and Exhibit CAP-09 is a copy of RAM's Reply to Opposition to Petition for Reconsideration dated September 21, 1990.

RAM also escalated its protest by recruiting a Member of Congress to lobby the FCC on RAM's behalf. Exhibit CAP-10 is a copy of a letter dated September 10, 1990 from Carl C. Perkins to Ralph A. Haller requesting that the FCC force Capitol to take 157.74 MHz rather than 152.48 MHz. Congressman Perkins repeatedly intervened with the FCC on RAM's behalf after that time.

Although 157.74 MHz had become available for high-powered PCP paging operations while Capitol's PCP application was pending at the FCC, I did not view 157.74 MHz as a realistic alternative to to 152.48 MHz for two main reasons. First and most importantly, I understood that Union Carbide, one of Capitol Paging's biggest common carrier paging customers, was using 157.74 MHz in the Charleston area for an

emergency service. I was not about to risk alienating Union Carbide by starting a paging service on its licensed frequency. Also, moving to 157.74 MHz would drastically limit Capitol's eventual ability to network with other carriers. Therefore, I did not pursue the possibility of Capitol switching to the PCP frequency 157.74 MHz.

RAM's Initial Attempts to Run Capitol Off of 152.48 MHz

The actual license for 152.48 MHz was issued to Capitol on September 12, 1990. However, before Capitol even started operating the station, **RAM started filing bogus complaints** against Capitol and accusing it of causing harmful interference.

The first complaint that Capitol became aware of was in a letter dated November 28, 1990 from RAM's counsel to Carol Fox Foelak. The complaint was delayed in reaching Capitol because it had been sent to the wrong address for Capitol's counsel, even though counsel's correct address had been included in all of Capitol's responses to RAM's numerous pleadings throughout the application processes at the FCC. In any event, the complaint was unfounded and Capitol immediately denied RAM's allegations. Exhibit CAP-11 is a copy of the covering letter and my companion declaration filed at the FCC by Capitol on December 4, 1990 denying RAM's allegations.

The next complaint that Capitol became aware of was in a letter dated March 5, 1991 from RAM's counsel to Carol Fox

Foelak. By that date Capitol had installed its PCP system and was in the process of testing it out prior to starting commercial operation. The system initially consisted of two General Electric Master Executive II base station transmitters borrowed from Calvin R. Basham at Communication Service, Inc. One of the transmitters was installed at Capitol's site on Nease Drive in Charleston, and the other was installed at Capitol's Kenova/Huntington site.

A Ranger Communications Marathon link transmitter operating on 461.150 MHz was installed at the Nease Drive site for simulcasting the Kenova base station with the Charleston base station. Capitol also added a channel card for 152.48 MHz to its existing Commonwealth paging terminal to use for PCP service; and the terminal was connected to the Nease Drive base station by dedicated telephone line.

Also, a Relm Communications RH256NB transceiver was modified to act as an off-the-air monitoring receiver and transmitter inhibitor in order to comply with FCC sharing requirements. This inhibitor was located in Capitol's terminal room at 1420 Kanawha Boulevard East, and was wired directly into Capitol's paging terminal. Throughout the time Capitol operated its PCP system, both in the initial construction and testing stages and after commercial operation started, the inhibitor was in place on the system and functioning.

When RAM complained to the FCC about interference on March 4, 1991, Capitol's PCP system was just being installed, including the inhibitor; and I felt once again that RAM was just trying to set Capitol up rather than solve a legitimate interference problem. Therefore, Capitol not only responded to the FCC concerning RAM's allegations, but Capitol also took the opportunity to alert the FCC to the fact that RAM had started interfering with Capitol's operations and, in fact, that RAM had admitted taking off its own inhibitor on 152.48 MHz so it could blot out any "interference" from other transmitters.

Exhibit CAP-12 is a copy of the letter and my companion declaration filed at the FCC by Capitol on March 15, 1991, together with a declaration by Calvin R. Basham advising the FCC that his company also had experienced interference from RAM's transmissions on 152.48 MHz.

I remember that there were some conversations between myself and RAM personnel around that time concerning interference complaints. The incidents I remember most clearly are discussed in my declaration filed at the FCC on March 15, 1991. In addition, Exhibit CAP-13 is a copy of a letter I subsequently received from Dale Capehart at RAM on March 19, 1991, concerning interference. I really don't remember too much about how that letter came about, except that Dale had called me with the idea of tying our terminals together

with wireline rather than using off-the-air monitoring as Capitol had been doing and RAM had been doing sometimes.

Because of RAM's unyielding hostility to Capitol up to that point, I was immediately suspicious of Capehart's motives in making the proposal and doubted his sincerity. The proposal would have meant a substantial additional expense to Capitol, because it would have entailed paying half the monthly cost for a dedicated interstate telephone line from Ashland, KY, where RAM had its terminal, to Charleston, WV, where Capitol had its terminal.

From my observation the basic problem was that RAM was disconnecting its off the air monitoring system from time to time; and it could just as easily disconnect the telephone line under some pretext of experiencing technical difficulty or blaming the problem on lousy service by the telephone company. Therefore, I felt that RAM was just trying to run up Capitol's costs without improving the situation at all.

Even if Capehart was being straight with me and he was right, as indicated in his letter, that the problem primarily was simultaneous seizure of the channel by the two systems, a wireline connection would not really resolve that problem. This fact indicated to me again that Capehart was not really being serious in his proposal, but was just trying to set Capitol up for some other attack by RAM.

The next event I can recall is that the FCC called a meeting on April 2, 1991 between representatives of RAM and

Capitol. I asked Capitol's counsel, Mr. Hardman, whether someone from the company should attend the meeting in addition to him. He said he didn't think it was necessary, so he went alone. After the meeting was over he called to report on what had occurred. **The thing I remember most is** that he reported that the FCC personnel had been very blunt and had said that RAM and Capitol had better cut out their fighting and obey the rules, and if they did not the FCC would revoke all of their licenses, not just their PCP licenses.

I did not interpret this as a threat directed solely against Capitol, because I did not believe that Capitol had done anything wrong and because Capitol was sincerely trying to comply with its obligations for sharing the channel with RAM and with the other FCC rules governing the PCP station. Also, the only thing I felt needed to happen for RAM and Capitol to "get along" was that RAM needed to use its inhibitor and to shut down after three minutes to let Capitol transmit.

In this regard, one of the problems Capitol had been experiencing with RAM was that it would tie up the PCP channel for long periods of time, sometimes 15 or 20 minutes in a row, before releasing the channel and allowing Capitol to transmit. I had been advised by NABER during the coordination process that PCP licensees could transmit only three minutes at a time, after which they had to relinquish the

channel and let other co-channel licensees transmit. RAM had not been doing so, and I had requested Mr. Hardman to be sure and point this out at the FCC meeting on April 2, 1991.

Exhibit CAP-14 is a copy of Mr. Hardman's letter dated April 3, 1991, to the FCC on Capitol's behalf concerning the three-minute issue and Mr. Shiben's letter dated May 14, 1991, responding on behalf of the FCC.

During this period of time I also recall calling Mr. James Walker several times at the FCC's field office in Baltimore to complain about RAM transmitting on top of Capitol and holding the channel for long periods of time. At one point I even made a videotape in front of Capitol's terminal showing its PCP system in operation and RAM's interfering transmissions. I sent a copy of the tape both to Mr. Walker and to RAM in the hope that it would demonstrate to them that Capitol was operating properly and that RAM was the real problem.

Mr. Walker would not always take my calls, but when he did he generally would refuse to get involved. One time I remember he said he was not about to get involved in a "p_____g contest" between RAM and Capitol. He also said he would not look at the videotape I sent him. After receiving this type of response, I eventually stopped calling him, even though RAM continued the same type of conduct as before.

Link Frequency Problems

From the beginning of the time Capitol started operating its PCP system, it had substantial and continuing problems establishing a clean and reliable linking channel between the Charleston and Huntington base sites. When Capitol first went on the air, it was licensed for a linking channel on 461.150 MHz. That proved unsuitable, however, because there was a co-channel community repeater in the Huntington area that, when it transmitted, would prevent the receiver in Huntington from detecting transmissions out of Charleston. Therefore, the link between Charleston and Huntington was too unreliable for a useful service in the Huntington area.

Capitol then coordinated another frequency through NABER. However, it turned out that the frequency NABER recommended was used by a local school system for buses, I believe it was Putnam County, West Virginia, so that one was totally unsuitable as well and was never implemented by Capitol.

The next frequency NABER recommended was 460.725 MHz, which Capitol implemented sometime during the summer of 1991. However, although the link frequency seemed to be clean, the actual link itself was still not operating reliably, so in late 1991 or early 1992 Capitol moved the Huntington base station from the Kenova site to a site at Rotary Park in Huntington. Our hope was that the new base

station site would afford a better transmission path between Charleston and Huntington.

The link still did not operate reliably, so the last thing Capitol did was to move the link transmitter during the summer of 1992 from Charleston to our transmitter site on Coal Mountain at St. Albans, West Virginia. This modification pretty well fixed the link problems Capitol had been experiencing, but of course it had no effect on RAM continuing to occupy the channel time and transmitting on top of Capitol's pages.

Exhibit CAP-15 is a copy of Capitol's various licenses and modifications relating to the PCP system, including the initial license for 152.48 MHz issued on September 12, 1990; the link frequency license for 461.150 MHz issued April 4, 1991; the first modification of the license for 152.48 MHz issued on May 8, 1991, to correct the control point location; the initial link frequency license for 460.725 MHz issued on July 19, 1991; the modified base station license for 152.48 MHz relocating the Huntington site to Rotary Park; and the modified link frequency license for 460.725 MHz relocating the link transmitter from Nease Drive in Charleston to Coal Mountain near St. Albans, West Virginia.

I also should note that Capitol did quite a lot of testing during this entire period of time when we had all of these problems with the link between Charleston and Huntington. Also, while Capitol did market its PCP service during

this time, it did not attempt to do so very aggressively. This was because the technical problems in the system had not been ironed out, because RAM continued to tie up the channel for long periods of time and to transmit on top of Capitol's pages when it was able to get some time, and generally because of the nature of the service in the first place as a supplementary type of offering. As a result, Capitol experienced considerable turnover of customers who tried the service and found it unsatisfactory.

The FCC Inspection in August 1991

After my telephone conversations with Mr. Walker in the spring of 1991, the next incident Capitol was aware of was the FCC inspection in August 1991. Capitol was not served with any complaint by RAM alleging interference by Capitol during July 1991, nor was Capitol otherwise made aware of any such complaint by RAM at the time.

In any event, I was not at the office (1420 Kanawha Boulevard East, Charleston) when the inspectors first arrived in August 1991, but my impression is that I arrived relatively soon after they did. As I recall they said they were there to inspect the PCP system. This did not particularly surprise me, because in my conversations with Mr. Walker earlier in the spring I had invited him down for a look at any time because I was confident that Capitol was in full compliance with the rules.

The inspectors stayed at the Charleston office for a period of time, probably an hour or two, looking around and asking questions about the terminal, how the system worked, customers, and that sort of thing. At one point one of the inspectors said that the Morse code identification by Capitol was too slow, at which point I said that these were the factory settings and called up Commonwealth to check things out.

While I was talking to the Commonwealth technician, one of the inspectors took the phone from me and spoke directly to the technician. When he hung up the telephone he just said something like "Well, those are the right settings" and did not request any changes. I believed that he was satisfied at that point, and did not pursue the issue any further.

At another point one of the inspectors walked over to the inhibitor and turned the squelch control farther to the left (i.e., counterclockwise) than it had been. He said something like "Here's your problem. This isn't set properly". Again, the inspector did not say anything about making any further changes, so I simply left the knob where the inspector set it and did not pursue the matter any further. In fact, the knob setting never was changed from where the inspector set it during the rest of the time the PCP system was in operation.

After the inspectors finished at the Charleston office, we drove up to the transmitter site at Nease Drive and then to the Huntington office and transmitter site. The inspectors drove in their car and I drove separately in my car with my Huntington manager, Rusty Harrison, who coincidentally happened to come to the Charleston office while the inspectors were there. While we were driving around Rusty and I repeatedly initiated test pages at the request of the inspectors. I placed pages manually from my cellular car phone, and Rusty placed pages manually from his portable cellular phone.

After we visited the Huntington transmitter site, the inspectors went their separate way and Rusty and I drove back to Charleston. At no time did they tell me that they had observed Capitol interfering with RAM or anything like that. At one point at the Charleston office I recall telling the inspectors that they should go check out RAM, and they replied that they had already done that. When they left at the end of the day I assumed that Capitol had passed the inspection and that no further action had to be taken.

That was the last incident I can recall until Capitol received a letter from the FCC the following May requesting certain information about the PCP system. Capitol's response was prepared by me or under my supervision and control and was filed with the FCC on June 17, 1992. Then the FCC hit Capitol with a Notice of Apparent Liability for

Forfeiture dated July 30, 1992. The Notice said Capitol should be fined $20,000 for what it claimed was "egregious misconduct" during the FCC inspection, including malicious interference, failure to monitor, excessive testing and transmitting station identification too slow. Exhibit CAP-16 is a copy of the Notice.

I was absolutely shocked and appalled when I read the Notice. I had no idea after the inspection was completed that there was any problem with what Capitol was doing, much less that it would be accused of "egregious misconduct". Therefore, Capitol determined to fight these unwarranted charges and it prepared and filed a rebuttal statement on September 30, 1992.

The next thing Capitol became aware of was when the FCC published its agenda on July 27, 1993 for its August 3, 1993 meeting. Again, Capitol was not served with any complaint by RAM concerning alleged interference by Capitol during August 27, 1992 or later on that fall; and Capitol was not otherwise made aware of any such claims at the time.

The FCC's July 27, 1993 agenda stated that the Commission was going to consider adoption of a hearing designation order and order to show cause against Capitol. The FCC then issued a press release on August 3, 1993 outlining the action it decided to take at its meeting, and the text of the order itself was issued on August 31, 1993. Capitol obtained a copy of the text of the order on September 2,

1993, and on the advice of counsel discontinued operating the PCP station that same day.

Allegations in the Hearing Order

Although my preceding testimony addresses and refutes many of the allegations in the hearing order, I would like to summarize my testimony on the various points. As far as the claims of interference by Capitol are concerned, Capitol had a properly functioning, monitoring receiver and transmitter inhibitor in place and operating as part of Capitol's PCP system on 152.48 MHz at all times that the system was in operation. The monitoring receiver was configured to operate effectively as a fixed tuned receiver on 152.48 MHz. This is an industry standard way of complying with Capitol's obligation to monitor the frequency before transmitting and to avoid causing harmful interference to co-channel licensees.

Capitol was not even operating its PCP station in November 1990 and could not have caused the interference RAM complained of during that time. On March 4, 1991, Capitol was operating with its inhibitor, and Capitol found no malfunction in its equipment when it investigated after receiving the complaint from RAM. On March 19, 1991, Capitol also was operating with its inhibitor in place, and the letter from RAM so indicates. In addition, the letter indicates that problem being experienced at that time was a mutual one of both systems periodically attempting to access

the channel at the same time. I know of no other interference problem on that date.

In July 1991, Capitol was also operating with its inhibitor, and I am not aware of any interference caused by its system during that time. Also, essentially until the proceedings were started in this case, Capitol was not aware that RAM had made any complaint of interference to the FCC concerning this time period because RAM never sent a copy of its complaint to either Capitol or its counsel.

In August 1991, throughout the FCC inspection, Capitol was also operating with its inhibitor in place and functioning. Again, Capitol is not aware that it caused any interference during this time, and it only became aware that there was a complaint in this regard by examining the inspectors' notes and other documents produced at Capitol's request either in the discovery portion of this case or in response to Capitol's Freedom of Information Act request for material related to the Notice of Apparent Liability for Forfeiture.

All claims of improper retransmissions by Capitol are simply wrong. Neither Capitol nor anyone acting on Capitol's behalf made such retransmissions in November 1990, on August 27, 1992 or thereafter. In fact, Capitol was also not even aware that RAM was making these complaints for the period August 27, 1992 and afterward until the proceedings

started in this case, because RAM again did not send a copy of its complaint to either Capitol or its counsel.

Capitol does not contest the claim of excessive testing or transmitting the station identification too slow. However, I would only point out on Capitol's behalf that the Morse Code violation was an honest mistake resulting from erroneous factory settings on a DIP switch on Capitol's equipment.

As far as the testing is concerned, I believe that most of the testing that Capitol did was justified by the technical difficulty it was experiencing with its PCP system, but I realize that the automatic test feature was left on all night by mistake on one occasion and that was wrong. Again, however, the mistake was an honest one committed in the course of legitimate testing procedures; it was not done with any intent to cause interference to RAM or anyone else on the channel.

Capitol vehemently denies the allegations of misrepresentation and lack of candor. As far as the alleged inconsistent representations about subscribers are concerned, Capitol at different times was asked to reconstruct its subscriber base for different points in time, usually long after the fact. This was extremely difficult to do because it required going through individual customer contracts and related documents to try to determine which specific customers were actually on the system at any given time. This